

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Rules and Regulations Implementing the</b>	)	
<b>Telephone Consumer Protection Act of 1991</b>	)	<b>CG Docket No. 02-278</b>
	)	
<b>Revolution Messaging’s Petition for an</b>	)	
<b>Expedited Clarification and Declaratory Ruling</b>	)	

**REPLY COMMENTS OF THE AFL-CIO REGARDING  
PETITION OF REVOLUTION MESSAGING FOR  
EXPEDITED CLARIFICATION AND DECLARATORY RULING**

The American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) respectfully submits those reply comments with respect to the pending petition of Revolution Messaging, LLC (“RM”), and comments filed in response to that petition, including by cc Advertising (“ccA”), CTIA- the Wireless Association (“CTIA”), the American Federation of State, County and Municipal Employees (“AFSCME”), and (jointly) the Center for Democracy and Technology and Common Cause (“CDT/CC”).

The AFL-CIO is one of the Nation’s largest membership organizations, with over 12 million members who are also members of the AFL-CIO’s 56 national union affiliates (including AFSCME) and the AFL-CIO’s community affiliate, Working America. The AFL-CIO and its national and community affiliates routinely communicate with their members about collective bargaining, legislative and political matters. These communications increasingly occur via social media, including email and text messaging, and their utility – which relies in large part on members’ willingness to exchange such communications with their unions – depends in substantial part on the trustworthiness of social media to receive and reject messages appropriately. Only if the communications technology can screen out spam messaging can it achieve broad acceptance and be productively used by union members in their dealings with the organizations they join and democratically control.

As set forth in the submissions to the Commission by RM and others, however, changes in technology in recent years have enabled business and others to generate quickly and inexpensively via the Internet mass text messages to individuals who have no relationship with the sender and have not consented to receiving them. The AFL-CIO's own experience is the same: its members have reported a substantial upsurge of such invasive and unwanted text-message communications to their cellular phones, especially during the past year in connection with national and state elections. These include misleading messages about voting rules whose impact can be interference with the right to vote itself, which is plainly intolerable.

The sources of many of these messages are at best opaque as numerous text-message spammers using automatic technology deliberately conceal or disguise who they are in ways that render it impossible to trace – much more so than mass messages using other media that fail to clearly self-identify in the communication itself, but where the technology and applicable disclosure laws enable such identification later. Many mass-produced text messages from such anonymous sources are offensive, disturbing or otherwise less mindful of appropriate content boundaries than they would be if their authors could be held accountable. Every such message degrades the value of the recipient's cell phone as a device for receiving communications and undermines faith in text-messaging as a communications medium even with trusted organizations.

The ease with which these messages can be sent underscores the need for action. Inexpensive technology enables companies and others to generate millions of scattershot messages to strangers' cell phones, and even a miniscule positive response rate is cost effective to the sender. That starkly contrasts with traditional and far less intrusive forms of individually targeted mass communications such as direct mail. Yet ccA asserts that unregulated Internet-to-phone text messaging to particular individuals will not generate a "flood" of unwanted messages because "[e]ven if a company sent an email to each of the 261 domains currently on the registry" in search of a particular individual whose email address is unknown, at most only one registry would apply to that individual. However, this very example proves the point that mass Internet-to-phone text messaging is so inexpensive that such electronic fishing expeditions are possible and likely to continue to proliferate. And, the more they do, the more spam texts will reach

particular individuals, even if it takes 261 sends by any one spammer to guarantee each desired contact.

Moreover, such practices come at a literal price for many recipients. The AFL-CIO's members and their families are concentrated in America's middle class, and, like most Americans, they are increasingly reliant on cellular phones as their primary or only telephone equipment. And, they use these devices to send and receive text messages as well. Substantial numbers of members and their families do not have access to or do not choose service plans that feature unlimited text messaging; rather, many still pay for messages at certain volumes, including messages that they receive, whether voluntarily or not. For them, unsolicited, automatically generated text messages can be costly as well as intrusive and distracting. The AFL-CIO and its affiliated unions regularly support public policies that protect the interests of all middle class families, as well as the working poor and the unemployed. These are the people who are most likely to feel the adverse impact of higher costs caused by their receipt of unwanted, automatically-generated text messages. They can least afford the consequences of such forced and unexpected payments, yet they have no practical choice but to maintain their phones because forgoing them is entirely impractical and self-defeating given their ubiquity and necessity for so many daily functions.

On this point, ccA asserts: "While it may be unfair for businesses to shift the cost of receiving a message on to consumers, political speech is different and citizens may have to bear some cost of receiving political speech." This "let them eat cake" dismissal of the significant cost-shifting aspect of spam text messaging is wholly inadequate, and devoid of explanation. It also underscores the uniqueness of the communications at issue: there is simply no other means of mass, automatically generated political communication that triggers a special cost to a recipient who took no action to either elicit or accept the message, other than telephone calls placed using automated telephone dialing systems ("ATDS") that all agree the TCPA already regulates in the manner sought by the petition for Internet-to-phone text messaging. Plainly, the policies that underlie the Congress's and Commission's previous work in the ATDS realm apply with equal force here.

The senders of these messages evidently take the position that ccA advocates (if they consider the matter at all), namely, that the Telephone Consumer Protection Act (TCPA) is

inapplicable to such conduct. In fact, however, the Commission would operate on firm legal ground if it were to decide instead to promote consumer interests and grant the RM petition. As RM, CTIA, and CDT/CC well explain, the TCPA and the Commission's previous rulemakings plainly establish that it has the authority to exercise its administrative discretion to render the core legal interpretation at issue, that the term "dial" within the ADTS definition comprehends Internet-to-cellphone text messaging. In sum, this term, adopted in 1991, has no statutory definition, but both the TCPA legislative history and the Commission's regulatory implementation of TCPA make clear that its meaning – as well as that of the term "call", a similarly undefined term whose breadth ccA concedes is not confined to technologies that were extant at enactment a generation ago – may be adapted to functionally equivalent emergent technologies. Indeed, if the TCPA could not be so applied then it would swiftly either become a dead letter or require continual congressional refinement to keep up with scientific and commercial developments. And, ccA's contention that such an interpretation of the term "dial" would over-inclusively capture "every text sent" is plainly wrong, for it overlooks the other ATDS definitional prong that restricts its reach to automatically generated communications.

The AFL-CIO is mindful that application of the TCPA to political Internet-to-phone text messages implicates First Amendment concerns because they are a form of political speech. But the kind of mass, automatically generated, intrusive, often deceptively sourced and often cost-imposing messages that are the subject of the RM petition are self-evidently qualitatively different from other means of mass communication, such as broadcast and print advertising, direct mail, live telephone calls and the Internet itself. Interpretation of the TCPA as proposed by RM is not foreclosed by the First Amendment.

The AFL-CIO appreciates the Commission's consideration of these comments.

Respectfully submitted,

A handwritten signature in cursive script that reads "Laurence E. Gold".

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